

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:**     Engineering

**AGENDA DATE:**    June 14, 2005

**CONTACT PERSON/PHONE:**   Rick Conner, City Engineer, Ext. 4423

**DISTRICT(S) AFFECTED:** 1

**SUBJECT:**

That the City Manager be authorized to sign a Cumbre Development Corporation ("Cumbre") (Montana Del Rey, L. P.), for the construction of a drainage structure to be located within Castellano Drive. This developer agreement is made pursuant to Section 212.071 and Section 212.072 of the Texas Local Government Code as well as the City of El Paso Municipal Code and shall amend the original Cumbre Estates developer participation agreement approved by Council on May 10, 2005

**BACKGROUND / DISCUSSION:**

Cumbre Development Corporation ("Cumbre") (Montana Del Rey, L. P.), for the construction of a drainage structure to be located within Castellano Drive.

**PRIOR COUNCIL ACTION:**

Related item submitted on May 24, 2005

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:**

(Example:     if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## **RESOLUTION**

**WHEREAS**, in 1997, the City approved a plat for a subdivision known as Cumbre Estates Unit One in El Paso, El Paso County, Texas ("Subdivision"). The Subdivision was owned by Cumbre Development Corporation ("Cumbre") who commenced a residential development;

**WHEREAS**, on September 27, 2002, prior to completion of the Subdivision, Cumbre filed for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Western District of Texas, El Paso Division. The Chapter 11 bankruptcy proceeding was converted into a Chapter 7 bankruptcy for which Donald S. Leslie was appointed as trustee ("Trustee");

**WHEREAS**, Developer acquired approximately 144 acres of land owned by Cumbre which included the Subdivision from the Trustee;

**WHEREAS**, Developer is completing the subdivision improvements, which include the construction of a drainage structure to be located within Castellano Drive ("Castellano Drainage Improvements"). Pursuant to the City approved subdivision improvement plans, the Castellano Drain Improvements consist of a twenty-four (24) inch reinforced concrete pipe installed along Castellano Drive;

**WHEREAS**, Developer has also been approved for Castellano Drain Improvements consisting of a forty-eight (48) inch pipe installed along Castellano Drive;

**WHEREAS**, the City would like to have Developer install an oversized pipe as part of the Castellano Drain Improvements to handle additional drainage in the area that is not attributable to the Subdivision ("City's Additional Drainage");

**WHEREAS**, the City and Developer have agreed that this Contract shall amend that Cumbre developer participation contract entered into and approved by Council on May 10, 2005 by replacing it in its entirety;

**WHEREAS**, City and Developer also agree that this contract will allow for the more timely and cost-efficient construction of the Castellano Drainage Improvements;

**WHEREAS**, the City and Developer agree that it is in the City's best interest for the Developer to undertake the full Castellano Drainage Improvements and that the El Paso City Council should approve this developer participation agreement as to same;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:**

That the City Manager be authorized to sign a Cumbre Estates Developer Participation Contract for the construction of a drainage structure to be located within Castellano Drive. This developer agreement is made pursuant to Section 212.071 and Section 212.072 of the Texas Local Government Code as well as the City of El Paso Municipal Code and shall amend the original Cumbre Estates developer participation agreement approved by Council on May 10, 2005 by replacing it in its entirety.

**PASSED AND APPROVED** this \_\_\_\_\_ day of June, 2005.

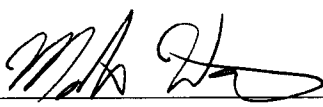
**THE CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook  
Mayor

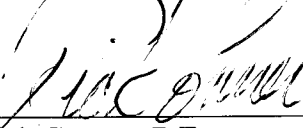
**ATTEST:**

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Matt Watson  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Rick Conner, P.E.  
City Engineer

## **AMENDED CUMBRE ESTATES DEVELOPER PARTICIPATION CONTRACT**

This Cumbre Estates Developer Participation Contract (Contract) is made by and between the **CITY OF EL PASO**, a municipal corporation in the State of Texas (the "City"), and **MONTANA DEL REY, L.P.**, a Texas limited partnership ("Developer") and is made pursuant to Section 212.071 and 212.072 of the Texas Local Government Code and Sections 19.28.030 and 19.28.040 of the El Paso Municipal Code.

### **STATEMENTS OF FACT**

**Whereas**, in 1997, the City approved a plat for a subdivision known as Cumbre Estates Unit One in El Paso, El Paso County, Texas ("Subdivision"). The Subdivision was owned by Cumbre Development Corporation ("Cumbre") who commenced a residential development;

**Whereas**, on September 27, 2002, prior to completion the Subdivision, Cumbre filed for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Western District of Texas, El Paso Division. The Chapter 11 bankruptcy proceeding was converted into a Chapter 7 bankruptcy for which Donald S. Leslie was appointed as trustee ("Trustee");

**Whereas**, Developer acquired approximately 144 acres of land owned by Cumbre which included the Subdivision from the Trustee;

**Whereas**, Developer is completing the subdivision improvements, which include the construction of a drainage structure to be located within Castellano Drive ("Castellano Drainage Improvements"). Pursuant to the City approved subdivision improvement plans, the Castellano Drain Improvements consist of a twenty four (24) inch reinforced concrete pipe installed along Castellano Drive;

**Whereas**, the City desires to have Developer install an oversized pipe as part of the Castellano Drain Improvements to handle additional drainage in the area that is not attributable to the Subdivision ("City's Additional Drainage");

**Whereas**, the City and Developer have agreed that this Contract will allow for the more timely and cost-efficient construction of the Castellano Drainage Improvements; and,

**Now, Therefore**, the City and Developer hereby agree to the following terms and conditions of this Contract.

1. Design of Castellano Drainage Improvements. Developer's engineers have designed the Castellano Drainage Improvements and the City Engineer has approved such design. A copy of the approved plans are attached hereto as Exhibit "A" (hereinafter "Improvements").

2. City's Participation. The total cost to construct the Improvements is Four Hundred Fifteen Thousand Dollars even (\$415,000.00) ("Total Improvement Cost"), as set forth in the Proposal submitted by C.F. Jordan, L.P., a copy of which is attached to this Contract as Exhibit "B". The City's portion of Improvements is One Hundred and Eight Thousand Dollars even (\$108,000.00) ("City Contribution"). Developer further agrees that in the event that the Total Improvement Cost is less, the City's Contribution shall be reduced proportionately.

3. Construction of the Improvements. The Improvements will be constructed within one hundred and eighty days (180) from the date of commencement. Developer shall apply for the permits with twenty (20) days from the effective date of this Agreement. The date of commencement shall be the date the contractor receives the grading permit from the City of El Paso.

4. Payment to Developer by City. Upon completion of the Improvements by Developer, as evidenced by a completion certificate executed by the Contractor and Developer, Developer will send an invoice to the City for the City Contribution. The City agrees to pay Developer the City Contribution within 30 days from receipt of an invoice. All of Developer's books and other records related to the Improvements shall be available for inspection by the City upon written request.

5. Effect on prior Cumbre Developer Contract. Developer and City agree that this Cumbre Developer Contract shall amend the prior Cumbre Developer Contract approved by the El Paso City Council on May 10, 2005 by replacing it in its entirety. Any rights or obligations set forth therein or created thereby are of no further effect and are replaced by the terms and conditions created herein.

6. Insurance. Throughout the time that the Improvements are under construction (the "Construction Period"), Developer shall have its contractor provide and keep in force, comprehensive general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) for personal injuries sustained by one claimant from a single occurrence, TWO MILLION DOLLARS (\$2,000,000.00) for personal injuries to more than one claimant from a single occurrence, and ONE MILLION DOLLARS (\$1,000,000.00) for property damages from a single occurrence. The City shall be provided with a copy of the policy evidencing such coverage. Such policy shall name the City as additional insured and shall be issued by an insurance company licensed to do business in Texas. Such policy shall provide for 30 days written notice to the City prior to cancellation or material alteration of the insurance coverage.

7. Indemnity. **DEVELOPER AGREES TO INDEMNIFY AND HOLD THE CITY HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY TO THE CONSTRUCTION OF THE IMPROVEMENTS SPECIFICALLY INCLUDING, BUT NOT LIMITED TO, CLAIMS FROM SUBCONTRACTORS, BONDING COMPANIES, EMPLOYEES OR OTHER INDIVIDUALS, FOR OBLIGATIONS ARISING FROM THE DEVELOPER'S CONSTRUCTION, OR FROM ANY BREACH ON THE PART OF DEVELOPER OF THE TERMS OF THIS CONTRACT. THIS INDEMNITY SHALL NOT EXTEND TO ANY CLAIM, DAMAGES, DEMANDS, COSTS AND EXPENSES RELATED TO EXISTING CONDITIONS, INCLUDING BUT NOT LIMITED TO, PRIOR AGREEMENTS OR PRIOR APPROVALS AFFECTING THE PROPERTY. THIS INDEMNITY IS LIMITED ONLY TO CLAIMS ARISING FROM THE CONSTRUCTION OF THE IMPROVEMENTS.**

8. Bond Required. Pursuant to §212.073 of the Texas Local Government Code, Developer must provide a performance bond for the costs of the Improvements to secure fulfillment of all of Developer's obligations under this Contract. The bond shall be in a form approved by the City. The bond must be executed by a corporate surety in accordance with 2253 of the Texas Government Code. The bond shall identify the City as Owner and Obligee and shall

bind both Developer's contractor and the Surety, their heirs, administrators, executors, successors and assignees, jointly and severally. The bonds shall expressly provide that Developer's contractor shall faithfully render performance under this Contract and shall remain in full force and effect until all requirements of the Contract have been performed to the City's satisfaction.

9. Governing Law. All questions concerning the validity, operation, and interpretation of this Contract and the performance of the obligations imposed upon the parties hereunder shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.

10. Interpretation. This Contract shall be deemed to have been jointly prepared by the City and Developer, and no ambiguity herein shall be construed for or against any party based upon the identity of the author of this Contract or any portion thereof.

11. Entire Contract. This Contract embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Contract. This Contract may not be modified except by an instrument in writing signed by both parties.

12. Notice. Any notice or communication required or permitted hereunder shall be given in writing and sent by (1) personal delivery, or (2) overnight delivery service with proof of delivery, or (3) United States Mail, postage prepaid, registered or certified mail, or (4) facsimile transmission addressed as follows:

**The City:**

City of El Paso

City Manager  
2 Civic Center Plaza  
El Paso, Texas 79901  
(915) 541-4200  
fax (915) 541-4441

**With a copy to:**

Office of the City Attorney  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901  
(915) 541-4550  
fax (915) 541-4710

**Developer:**

Montana Del Rey, L.P.  
601 Sunland Park Drive, Bldg 1, Suite 200  
El Paso, Texas 79912

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or overnight delivery or, in the case of certified or registered mail, as of the date of deposit or delivery to the United States Mail in the manner provided herein, or in the case of delivery by facsimile, upon receipt of confirmation of delivery by the party sending the notice or communication. Any notice required by this Contract or in any way related to the transaction contracted for herein shall be void and of

no effect unless given in accordance with the provisions of this Section. Either party hereto may change the address for notice specified above by giving the other party ten (10) days advance written notice of such change of address.

Effective this 14<sup>th</sup> day of June, 2005.

**WITNESS THE FOLLOWING SIGNATURES:**

**CITY OF EL PASO**

\_\_\_\_\_  
Joyce Wilson, City Manager

Developer:

**MONTANA DEL REY, L.P.**

By: El Paso MDR, L.L.C.

Its: General Partner

By: \_\_\_\_\_

Eddie Karam

Its: Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Matt Watson  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Rick Conner  
City Engineer

\_\_\_\_\_  
Pat Adauto  
Deputy City Manager for  
Building & Planning Services

STATE OF TEXAS           §  
                                     §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_ 2005, by  
Joyce Wilson, City Manager for the City of El Paso.

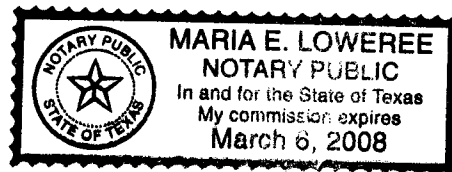
\_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF TEXAS

COUNTY OF EL PASO

This instrument is acknowledged before me on this 1<sup>st</sup> day of June 2005, by Eddie Karam, Manager of El Paso MDR, L.L.C., general partner of Montana Del Rey, L.P., on behalf of said company.

Maria E. Lowerree  
Notary Public, State of Texas





## **List of Exhibits**

1. Exhibit "A" – Approved Improvement Plans
2. Exhibit "B" – C.F. Jordan, L.P. Proposal



April 1, 2005

Mr. Doug Borrett  
Karam Company  
601 Sunland Park Dr.  
El Paso, Texas 79912

**RE: BID PROPOSAL FOR CUMBRE ESTATES UNIT ONE (CASTELLANO DRIVE  
FROM MESA STREET TO GRAND TETONS)**

Dear Mr. Borrett:

C.F. Jordan is pleased to provide our cost proposal for the above-mentioned project. We have reviewed the plans dated November 2004 produced by Brock and Bustillos and our proposal is as follows:

SITWORK INCLUSIONS:

- Remove asphalt and saw cutting asphalt.
- Excavate, install 48-Inch RCP Class III, backfill, install junction box, inlet, concrete spillway, concrete headwall with railing and grouted rip-rap.
- Paving 2 -inch asphalt patching and 2-sack backfill.
- Sales Tax, Bond
- Traffic Control
- Mobilization/General Conditions/Layout

**Total Cost for Site work: \$415,000.00**  
**If sales tax is not applicable Deduct <\$ 9,245.00>**

EXCLUSIONS:

- Any existing utility relocation
- Testing/Permitting/Engineering
- Electrical/Mechanical work
- Irrigation/Landscaping / Topsoil
- Unsuitable soils removal
- No backfill for bldg. footings
- Rock excavation.
- Archeological Issues

We appreciate the opportunity to submit this proposal and should you have any questions or comments, please feel free to contact our office at 915-877-3333. This quote is good for thirty days from date of proposal.

Sincerely,

John M. Goodrich, P.E.  
Vice President